

# Introduction

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When Lynne Lasry, President of the Law Alumni Board, suggested we celebrate the 60th anniversary of the University of San Diego School of Law with a public program on *Brown v. Board of Education*, which was decided on May 17, 1954, just a month after the law school welcomed its first class in April 1954, I enthusiastically endorsed the idea. However, I have to admit that I did not foresee just how fitting commemorating these two milestones would become and what a significant opportunity it would be to both celebrate what our law school has achieved in its relatively short history and to highlight the important work that great law schools, like USD, are doing and need to continue to do in educating leaders who are committed to advancing justice, equal access and civil liberties in our society.

At the law school's anniversary celebration held on April 7, 2015, the focal event was a panel discussion of *Brown v. Board of Education* featuring four distinguished members of the USD School of Law faculty and moderated by Vice Dean Mary Jo Wiggins, whose introduction to this Special Issue of the *San Diego Law Review* follows. The topic was the lasting impact of the *Brown* on various areas of the law. The article jointly authored by Professor Roy Brooks and law student, Kelly Smith, *Juridical Subordination*, includes the remarks Professor Brooks made that evening on the importance of *Brown* to the idea of racial advancement through the law and civil rights movements. The remarks made by Professor Donald Dripps at that event took a narrower and more critical view of the legacy of the *Brown* decision by looking at the current state of the criminal justice

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system and the disproportionately high incarceration rate among young African-American men. In his article, *Race and Crime Sixty Years after Brown v. Board of Education*, Professor Dripps elegantly describes the situation and articulates constructive steps that the Supreme Court could take, consistent with the reasoning in the *Brown decision* to reform the criminal justice system and to move American society closer to the ideal of equal justice under the law. In addition to the presentations by Professors Brooks and Dripps at that event, Professor Orly Lobel discussed the impact of *Brown* on employment and labor law and Professor Laurie Claus discussed the case's impact on constitutional law. These faculty presentations and the ensuing discussion that evening reflected the breadth of the impact that *Brown v. Board of Education* has had on American society. As Lee Bollinger has written: "The decision was not just about schools; it was about the nation living up to its own professed ideas. By addressing, and dealing with, racial injustice, the Supreme Court spoke to every sector of society—and every sector responded."<sup>1</sup>

At the same time, the panel discussion at our anniversary celebration also served to showcase the unfinished legacy of the *Brown* decision. School segregation and the racial achievement gap remain huge issues in American society and too many of the headline stories of recent months make it evident that, despite the remarkable progress of the past 60 years, racial discrimination endures, even at a time when our population is becoming increasingly diverse and even, in places like California, where minorities have already become the majority among the school-age population.

The three thoughtful articles contributed by students to this Special Issue focus on different aspects of the unfinished legacy of *Brown* in integrating schools and providing African-Americans with equal access to quality education. Kelsey McCarthy's article, *The Battle of the Branches: The Impact of the Judiciary and Title VI on Desegregation in the American Public School System*, critically assesses the limited effectiveness of both court and legislative action in eliminating *de facto* school segregation. Lindsey Herzik's well-crafted article, *A Better IDEA: Implementing a Nationwide Definition for Significant Disproportionality to Combat Overrepresentation of Minority Students in Special Education*, highlights the "resegregation" resulting from the significant disproportionality of

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1. Bollinger, Lee. *Sixty Years Later, We Need a New Brown*, THE NEW YORKER (May 16, 2014), <http://www.newyorker.com/news/news-desk/sixty-years-later-we-need-a-new-brown> [<http://perma.cc/A3K2-3L77>]. Lee C. Bollinger is the president of Columbia University. As president of the University of Michigan, he led the litigation defending its law school and undergraduate admissions policies in the 2003 Supreme Court cases *Grutter v. Bollinger* and *Gratz v. Bollinger*.

African Americans and other minorities relegated to special education classes in the public school system. And Brooke Finley's thoughtful article, *Growing Charter School Segregation and the Need for Integration in Light of Obama's Race to the Top Program*, focusing on the disturbing situation in post-Hurricane Katrina New Orleans, argues that charter schools, rather than improving the quality of public education, may be perpetuating segregation, underperforming relative to other public schools and worsening the performance gap for African American students.

Professor Kiyana Kiel addresses the controversial issue of affirmative action in her article, *Brown, Fisher, and the Necessity of Context to Achieve Racial Equity in Public Institution*, making a passionate case for why achieving racial equity through educational diversity should remain a compelling government interest. She supports her case for affirmative action with a provocative discussion of the issues of structural and institutional racism and white privilege, providing many disturbing examples that give broader context to the African American incarceration rate discussed by Don Dripps. One example of institutional racism she does not cite, but knows well from her experience overseeing our academic success program, is that the bar examination passage rate for African American graduates of ABA accredited law schools remains substantially below that of whites and appears to be worsening.<sup>2</sup> Whether this example argues for or against affirmative action is a matter on which there are strong differences of opinion. But this disparity in bar passage rates is certainly an indication that we have a long way to go in solving the problems of equal access and racial equity.

I commend Lynn Lasry, the members of our faculty colleagues who contributed so thoughtfully to the public discussion of *Brown v. Board of Education* at our 60th anniversary celebration, each of the contributors of the articles, especially our impressive students, and everyone who has made this Special Issue of the *San Diego Law Review* possible.

This Special Issue of the *San Diego Law Review* is a wonderful testimony to the national reputation that the University of San Diego has established in its relatively short history for outstanding teaching and scholarship and for producing lawyers who are leaders in service to the legal profession,

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2. There is limited reliable data available on bar passage rates by race and socio-economic background. A recent example of the achievement gap are the results of the July 2014 California bar examination, where the passage rate for African-American first-time takers who graduates from ABA accredited law schools was 42% compared to an overall passage rate for first-time takers from those schools of 69%.

their communities, and our country. Beyond the thoughtful analysis in these articles is the need for action in our schools and communities as well as in the courts, legislatures and government agencies to fulfill the legacy of *Brown v. Board of Education*. I am confident that our faculty, students and alumni will continue, in both their words and actions, to make notable contributions to advancing the legacy of the *Brown* decision and in ensuring equal access to quality education and equal opportunity for all in our society, and that their contributions, represented by the excellent articles in this Special Issue of the *San Diego Law Review*, will become part of the lasting legacy of the University of San Diego School of Law.